

Early the next morning Abdul Jalil left his house and reported the matter to the police. The security forces were duly informed and Abdul Jalil took them to his house. It is unnecessary for the purpose of this appeal to describe in detail what happened when the security forces approached the house. The three appellants were duly arrested and were identified by Abdul Jalil as being three of the group of eleven men whom he had encountered the previous evening. After some questioning, the Second Lieutenant who was in charge of the security forces was led to Abdul Jalil's boat where a number of firearms and some ammunition were found. These firearms and ammunition had been left in the boat by the group of eleven persons.

In our view the evidence given by Abdul Jalil to which we have referred and which was to the effect that the group of eleven persons requested him to take them to Indonesia must at the very least raise a reasonable doubt whether the appellants intended to act in a manner prejudicial to public security as is alleged in the amended second charge. It follows that in our judgment the appellants should have been acquitted.

Several other grounds of appeal were put forward by counsel for the appellants but in view of the conclusion which we have reached it is unnecessary to deal with them.

For the reasons which have been stated the appeal was allowed and the convictions quashed and sentence set aside.

Appeal allowed.

HALIJAH v. VELAITHAM

[O.C.J. (MacIntyre J.) December 15, 1965]

[Ipoh — Civil Suit No. 417 of 1963]

Negligence — Res ipsa loquitur — Inevitable accident — Volenti non fit injuria — Quantum of damages.

Damages — Fatal accident — Loss of expectation of life and pain and suffering.

The plaintiff claimed damages against the defendant for loss of expectation of life and loss to the estate arising from the death of her husband in consequence of injuries sustained when the car in which he was driven by the defendant crashed into a ravine. To prove negligence the plaintiff relied on *res ipsa loquitur*. The defendant denied negligence or that the deceased died of injuries sustained in the accident and averred that the accident was inevitable owing to the sudden puncture of a tyre. He also pleaded *volenti non fit injuria*.

Held: (1) on the facts it appeared that the car was being driven at an excessive speed and the accident was due to the failure of the defendant to exercise the duty of care which he owed his passengers, in that he was inattentive to the conditions on the road when he attempted to overtake a lorry;

(2) although the evidence showed that the defendant had consumed some beer before driving the car

there was no evidence to show that he was not in a fit condition to drive the car and the plea of *volenti non fit injuria* must fail;

(3) the defendant was therefore liable in damages, which would be assessed at \$3,000 for damages for loss of expectation of life and \$4,500 for damages for pain and suffering.

Cases referred to:—

(1) *Lee Sai Cheong v. Wan Lim Cheong* [1962] M.L.J. 259.

(2) *Seow Seng Choon v. Yam Kim Chye & Anor.* [1952] M.L.J. 244.

(3) *Longhran v. Armstrong* [1956] M.L.J. 137.

(4) *Drennan v. Greer* [1957] M.L.J. 77.

(5) *Quek Poh Ser & Anor. v. Jhagir Singh* [1962] M.L.J. lxxxviii.

(6) *Wong Kuee v. Pahang Lin Siong Motor Co. Ltd.* [1962] M.L.J. lxxxiii.

CIVIL SUIT.

Ng Chee Kong for the plaintiff.

N. Sharma for the defendant.

Cur. Adv. Vult.

MacIntyre J.: This action is brought by the widow of one Mohamed Hussein bin Ahmad Tajuddin (deceased) claiming damages against the defendant for loss of expectation of life and loss to the estate arising from the death of the deceased aforesaid on the 14th of April 1963 in consequence of injuries sustained on the 16th day of July 1962 when the car in which he was driven by the defendant crashed into a ravine off Tambun Road, Ipoh. To prove negligence the plaintiff relies on *res ipsa loquitur*.

The defendant on the other hand denies negligence or that the deceased died of injuries sustained in the accident, and avers that the accident was inevitable owing to the sudden puncture of a tyre. He also pleads *volenti non fit injuria*.

It is clear from the evidence that the accident took place on the 17th of July 1962 and not on the 16th as pleaded by the plaintiff.

It would also appear from the evidence that at about 4.45 p.m. on the 17th day of July 1962 the deceased and one Syed Razali (P.W.3) decided to go with the defendant in his car on a spree. Their plan was to visit the military canteen at the Territorial Army Headquarters near Tambun Road and there to regale themselves with duty free beer. However, they did not reach their destination till 9 p.m. since in the meantime the deceased wanted to contact a friend. The unsuccessful quest took them first to a house in Lahat Lane, then to a place near Rex Theatre, and then to the Jubilee Park. From there they adjourned to a restaurant near Rex Theatre and finally to the army canteen.

At the canteen they met friends and were introduced to one Raja Aziz. The defendant,

according to his own evidence, consumed two half bottles of beer. Then at about 10 p.m., at the request of the deceased, the defendant agreed to drive Raja Aziz to his residence in Tambun village. The party got into the car with the defendant in the driver's seat and Syed Razali beside him. Raja Aziz took the rear seat behind Syed Razali and the deceased sat behind the defendant.

Leaving the Army Headquarters the car turned into Tambun Road and near the Chinese cemetery grounds came up behind a lorry going in the same direction. Tambun Road was then a speed restricted area and the maximum permissible speed was 30 miles per hour. According to the defendant he drove his car at a moderate speed but when about to overtake the lorry he increased it to 25 miles per hour and sounded the horn. Whereupon the lorry was said to have swerved to its right, and at the very same time the car which was 15 yards behind the lorry was said to have started to wobble and pull towards its right and then to have veered off the road and somersaulted into a ravine on the right side of the road. The defendant deposed that when he got out of the car he found the rear door open and the deceased lying on the ground seriously injured. A passer-by informed the police and within half an hour the deceased and the other passengers including the defendant were taken to hospital.

At 11.40 p.m. at the hospital the defendant made a report to the police (B.2), according to which the accident was caused by the lorry suddenly swerving to its right when he was about to overtake it thereby causing him to lose control of the car.

The police sergeant (P.W.6) who investigated the accident deposed that when he examined the car at the scene of the incident he did not find any of the tyres flat but noted that the nearside front tyre was less inflated and had a nail sticking into it to a depth of half an inch. The tyre was again seen by the motor vehicles examiner (P.W.7) on the 18th day of July and according to his evidence also the tyre was not flat but less inflated than the other three. A photograph was taken of the car but no evidence was led to shew the time and date when it was taken. The photograph is B.6A in the agreed bundle of documents and it shews the left nearside front wheel tyre flat or almost flat. It also shews that it was taken in broad daylight and not at night and therefore it could not have been taken on the night of the accident itself.

According to the defendant he first came to know of the puncture of the nearside front tyre on the 18th and realised then only why his car wobbled and went off the road. At the place

A where the car fell as shewn in B.7D there is a barbed wire fence. It is not an unlikely place to find nails lying about. The nail found sticking into the tyre of the defendant's car might well have got into it when the car somersaulted and landed on its wheels near the fence and because the nail was not removed immediately, that fact might explain why the tyre was not flat when seen by the sergeant and the vehicles examiner.

B The defendant further said in evidence that the swerving of the lorry to the right was not the cause of the accident. If the primary cause of the accident as he said in court was the wobbling of the car one would have expected the defendant to have mentioned that fact in the report. He made no mention of it and in fact blamed the swerving of the lorry for his losing control of the car. I believe that the defendant after seeing a flat tyre on the 18th of July took advantage of it to change his story as to the cause of the accident.

C On the evidence before me I have come to the conclusion that at the time of the accident the front nearside wheel tyre of the defendant's car was not flat and that the condition of the tyre was not the cause of the accident.

D I would like to mention in passing that the plaintiff's counsel suggested in the course of cross-examination of the defendant that if the tyre on the nearside front wheel had gone flat the pull on the car would have been towards the left side of the road and not to the right. There is no doubt some substance in that suggestion but in the absence of expert evidence I was not prepared to take that proposition into consideration.

E The police sergeant (P.W.6) made a sketch plan (B.3) of the scene of the accident. From the presence as well as the absence of the tyre marks at the scene it would appear that the defendant's car first veered off to the grass verge on the right side of the road with the brakes on, then came back on to the road with the brakes off and again veered off to the right on the grass patch with the brakes on and then fell into the ravine. The plan shews two tyre marks running parallel to each other on the grass verge from where the car took off when it fell into the ravine but only a single tyre mark when it first swerved on to the grass patch. The single tyre mark is shewn as F to H on the sketch plan and is also shewn in the photograph B.7C. According to the sergeant, this was a brake mark made by the offside front tyre of the car because the dark stains on the tyre matched the colour made by the tyre on the road. Defendant denied that the mark was made by the front offside tyre because when he revisited the scene on the 18th of July it was apparent

to him that it was made by a wheel with a flat tyre since the rim of the wheel had also left its mark on the road.

The defendant denied applying the brakes immediately before or during the accident. The reason, according to him, for not taking this simple and necessary precaution was the fear that the car might have somersaulted had he applied the brakes. Such a fear could have arisen only if the car was driven at an excessive speed or at a moderately high speed on a slippery road. But then, again according to the defendant, the road was dry and his speed was moderate.

In applying the doctrine of *res ipsa loquitur* to the facts of this case, it appears to me that the car was driven at an excessive speed and that the accident was due to the failure of the defendant to exercise the duty of care which he owed his passengers, in that he was inattentive to the conditions on the road when he attempted to overtake the lorry. His lack of alertness might have been caused by the amount of beer he had consumed at the canteen. However there was no evidence to indicate that he was not in a fit condition to drive the car.

The reason given by the defendant for not applying the brakes was the fear that the car might perform a somersault. But according to him, despite taking that precaution, the car did perform a somersault. The performance of the car and the presence of tyre marks on the road is consistent with the defendant having applied his brakes when the car was travelling at high speed.

I find no substance in the defendant's contention that the single tyre mark shewn as F to H in the sketch plan was not a brake mark but a mark made by the tyre and the rim of the nearside front wheel because the tyre had gone flat. If that theory is correct then the mark would have continued unbroken till the car plunged into the ravine. According to the sketch plan the mark disappears when the car was swerved back to the road and the defendant's theory must therefore fall by the wayside.

Again the defendant's theory does not fit in with the absence of any damage to the tyre by the rim cutting into it or any damage to the rim itself. The vehicles examiner who gave evidence for the plaintiff did not find any evidence of damage either to the tyre or the wheel rim when he examined the car on the day after the accident. This is what he said in evidence, and I quote: "I found the vehicle roadworthy. I examined the tyres. The tyres were not in a dangerous condition. With these tyres one could safely use a car on the road." And again, "When I examined the car the nearside tyre was not flat. It was, however, not fully inflated."

A To this evidence I would add that the photograph B.6A shews no evidence of any damage to the tyre by the rim of the wheel cutting into it. Again the rim mark allegedly seen by the defendant on the road beside the tyre mark on the morning of the 18th of July is not visible in the photograph B.7c which
B shews the tyre mark clearly on the road.

The presence of a single tyre mark on the road may indicate that the brakes were not effective on the wheels on one side of the car; but that possibility is discounted by the evidence of the vehicles examiner and the fact, as evidenced by the sketch plan, that the brakes did function on all four wheels just before the car plunged into the ravine. A single brake mark could also be accounted for by the car travelling for some distance on two wheels on one side of the car only. Common experience will tell that such a thing could happen when
C brakes are suddenly applied to a car travelling at great speed and at the same time the car is turned to a side. In such a situation if the car is swerved to the right the wheels on the opposite side would be temporarily lifted off the ground. Hence the single brake mark on the road.

If the facts are, therefore, allowed to speak
E for themselves, they indicate that all the tyres of the car were fully inflated at the time of the accident, and, that the brakes were applied when the car was travelling at great speed. I will also venture to say, for reasons which I shall give presently, that the facts also point to a lack of alertness on the part of the defendant
F when he attempted to overtake the lorry.

The defendant's story is incompatible with the alleged behaviour of the driver of the lorry. If the defendant had sounded his horn, as he said he had, and assuming that the driver of the lorry was a rational human being, he would have moved his lorry to the left side of the road instead of to the right. Again, if he had any idea that the defendant was about to overtake him he would have signalled his intention to move to his right of which there is no evidence.

Unless the lorry driver moved his vehicle
H to his right with the deliberate intention of blocking the passage of the defendant's car — a supposition which I reject as being highly improbable and unreasonable — it would be reasonable to assume from his alleged conduct that he was about to overtake or pass another vehicle, pedestrian, animal or obstruction on the left half of the road ahead of him.
I

Since the onus of disproving negligence in this action, in view of the plea of *res ipsa loquitur* was upon the defendant, it was for him to have adduced evidence to shew that conditions on the road were appropriate for overtaking the lorry. All that the defendant said

in his evidence was that there was no oncoming traffic but not a word about whether the road ahead of the lorry on the left side was free of traffic or obstruction.

Now in regard to the contention that the death of the deceased was not due to the injuries sustained in the accident on the 17th of July 1962, I have to refer only to the medical evidence.

The injuries sustained by the deceased were as follows:—

- (1) Superficial laceration about 1" long on the right eyebrow;
- (2) Superficial abrasion on the right side of chest; and
- (3) Compressed fracture of the 6th and 7th thoracic vertebrae.

As a result of injury No. 3, he had complete lack of sensation and motor activity of the lower limb. In other words, he was permanently paralysed below his waist. He had no chance of recovery whatever and death through urinary infection was only a matter of time.

The deceased remained in hospital from the date of the accident on the 17th day of July 1962 up till the 1st day of December 1962 when he was discharged at the request of the relatives. His condition was beyond medical treatment except for nursing and he was therefore taken to the house of a relative (P.W.2) who nursed him till the day of his death.

On the 14th day of April 1963 the deceased died. He was not seen by a doctor after his removal from hospital but according to P.W.2 he had difficulty of breathing for a few days before his death. His death was certified by a hospital assistant attached to the Municipality but the certificate was not produced. However, Dr. Damodaram, (P.W.4) who attended the deceased in hospital said in evidence as follows:—

"He was discharged from hospital because his relatives insisted on his discharge. His condition was such that it was only a matter of time that he died of urinary infection. Had he stayed in hospital his life might have been prolonged."

"Unless some other cause intervened his death in April 1963 would have been due to the infection of the kidneys."

Later in cross-examination:

"My opinion of the cause of death is not based on speculation but on the condition of the patient when he left the hospital."

Dr. Rao, the surgical specialist (P.W.5), said in evidence:

"If no other causes intervened then his death in April 1963 must have been due to urinary infection."

On the evidence before me, I have no reason to believe that the deceased died of any other

cause than as a result of urinary infection arising out of the permanent injuries sustained in the accident.

The plea of *volenti non fit injuria* is, in my opinion, inconsistent with the plea of inevitability of the accident. If one could not foresee the accident I fail to see how the deceased could be said to have accepted the risk. Again it was never suggested that the defendant for some reason or other had rendered himself so incapable of driving the car that anyone getting into the car should have alerted his mind to the risk involved. The plea of *volenti non fit injuria* must therefore fail.

In the result the plaintiff succeeds in her claim for damages.

The amount which would accrue by way of damages to the estate of the deceased under section 8 of the Civil Law Ordinance in this case would consist of an award for loss of expectation of life and an award in respect of pain and suffering. Following the decision in *Lee Sai Cheong v. Wan Lim Cheong*,⁽¹⁾ I will award \$3,000 for loss of expectation of life.

As for damages for pain and suffering the Court of Appeal decided in *Seow Seng Choon v. Yam Kim Chye & Anor.*⁽²⁾ that it would be wrong to treat damages for pain and suffering as analogous to that for loss of expectation of life and that the sum awarded for the former should be the same as would have been awarded if the deceased had recovered.

In *Loughran v. Armstrong* ⁽³⁾ Whyatt C.J. observed:

"In the application of principles of compensation to the imponderable items of pain and suffering and loss of amenity, the courts seek, as far as possible, to achieve some measure of uniformity and the only way of doing this, as Romer L.J. observed in *Rushton v. National Coal Board*, is to consider cases which have come before the courts in the past and see what amounts have been awarded in circumstances comparable with those in the case before the court. It is, of course, important, as was stated, or at least implied, in *Low Ah Tow v. Yusof bin Kayab*, that the cases to which reference is made should be fully reported so that the facts may be properly appreciated; but provided this condition is fulfilled I am of the opinion that it is of great assistance in aiming at uniformity to examine cases where circumstances are comparable."

This dictum was re-stated by Thomson C.J.. (as he then was) in *Drennan v. Greer* ⁽⁴⁾ in the following words:

"The judge when sitting alone must, when assessing damages, pay some sort of regard to the general run of damages, and that if he gives something which is manifestly a departure from the general run of assessments, then the figure at which he arrives will invite rather more attention from the Court of Appeal than would otherwise be the case."

The quantum of damages awarded for pain and suffering in *Quek Poh Ser & Anor. v. Jhagir Singh* ⁽⁵⁾ and in a string of English cases cited

in pages 348 to 369 of *Kemp & Kemp* (2nd Edition) Vol. 1, were commended for my consideration by counsel for the plaintiff in assessing damages under this head in the present case. I cannot, however, accept the comparison since the awards made in the cases cited were in favour of living persons and based on their life expectation for a given number of years whereas in the present case the award would go to the estate of the deceased for the benefit of other persons.

The facts in *Seow Seng Choon v. Yam Kim Chye & Anor.*, *supra*, and in *Wong Kuee v. Pahang Lin Siong Motor Co. Ltd.*⁽⁶⁾ are comparable with the facts in the present case except for the period of pain and suffering. The injured persons in the above cases died 3 days after the accident whereas in the present case the deceased died 9 months later. In the first case, the award made was \$2,000 and the quantum was upheld by the Singapore Court of Appeal. In the second case, the award was \$800. These awards indicate the impossibility of measuring the degree of pain and suffering by any universal standard. It is equally impossible to fix the amount of damages commensurable with any given period of suffering by a deceased person.

Taking into consideration all the circumstances, I will award \$4,500 as damages for pain and suffering. Therefore the total award in respect of damages under section 8 of the Civil Law Ordinance would be \$7,500.

In regard to the claim under section 7 of the Civil Law Ordinance for loss of support, the plaintiff deposed that the deceased gave her \$170 every month from his salary of \$240.50 per mensem for living expenses. She also claimed that the deceased in addition to the monthly allowance given to her spent about \$30 a month in buying clothes for her and from \$20 to \$30 in buying clothes for himself.

However, it appeared from the evidence of the Superintendent of Stores (P.W.3) that for about a year preceding the accident a sum of \$71 to account of loan instalment and subscription to the Government Co-operative Society was deducted from the deceased's salary. Therefore the net sum he would have received per month during the year would have been \$169.50. I doubt that deceased gave the plaintiff the whole of that sum. However taking into consideration the fact that one of the perquisites attached to the deceased's office was a rent free house and the social status of the plaintiff, I would assess the loss of support at \$85 per month.

At the time of the accident the deceased was 36 years of age and the plaintiff was 38. In normal circumstances, the deceased could have worked for another 20 years and earned

his pension. However, having regard to the uncertainties of life I shall take 15 years as his normal expectation of life if he had not met with the accident. From this figure I shall take away another 3 years to cover such contingencies as death or re-marriage of the widow and reckon the loss of support on the basis of 12 years' purchase. 12 years' purchase of \$85 a month is \$9,037.00.

Since the award under section 8 would merge with the award under section 7, I award \$9,037.00 as general damages.

The special damages claimed by the plaintiff amounts to \$6,313.40 made up as follows:

(a) Funeral expenses	\$ 300.00
(b) Medical expenses incurred from 17.7.62 to 14.4.63	1,500.00
(c) Loss of earnings at \$301.50 from 17.7.62 to 14.4.63	2 693.40
(d) Extra nourishment	1,200.00
(e) Travelling expenses incurred	120.00
(f) Medical expenses (Malay)	500.00
	<u>\$6,313.40</u>

With regard to funeral expenses I allow the claim of \$300 under item (a).

As for the medical expenses amounting to \$1,500 claimed under item (b) and another sum of \$500 under item (f) and alleged to have been incurred between the 17th of July 1962 and the 14th of April 1963, the plaintiff failed to call any independent evidence to substantiate the claims. No bills, vouchers or receipts were produced. Nor were the names of the drugs or the nature of the medical treatment specified. The sum of \$1,500 was said to have been borrowed from one Samsuddin, but he was not called as a witness. Again, it is admitted in evidence that from the 17th of July up to the 1st of December 1962 i.e. for a period of 136 days the deceased was treated in hospital and a sum of \$2.50 per day was deducted from his salary amounting in all to \$340. But this amount which the plaintiff is entitled to claim is not included in item (b) or under any other items mentioned above. The hospital assistant who attended the deceased in his house from the date of the latter's discharge from hospital to the date of his death about 4½ months later, said in evidence that medical dressings and drugs purchased by him averaged \$70 a month but he would not think of claiming the amount from the plaintiff. All this evidence was vague and wasted effort on the part of the plaintiff to prove her claim. Special damages must be strictly proved and the only sum I am prepared to allow under medical expenses is \$340.

The claim for \$2,693.40 under item (c) being alleged loss of earnings by the deceased from the date of his accident on the 17th of July

1962 to the date of his death on the 14th April 1963 is also a highly inflated claim. In the first place, the claim is based on the assumption that the deceased's salary was \$301.50 per mensem when in fact it was \$240.50. In the second place, according to the evidence, the deceased was in receipt of his full salary up till the 17th of February 1963. He died two months later. Having been a government servant since 1945, he was presumably paid a pension during the remaining two months of his life. No evidence was called to prove the difference between the deceased's salary and pension and this court cannot be expected to procure the necessary evidence for the plaintiff who is represented by counsel. I therefore reject the claim under item (c).

Again with regret, I have to reject the claim for \$1,200 under item (d) for extra nourishment for want of strict proof. I shall, however, allow the item of \$120 for travelling expenses under item (e).

The total amount I shall therefore award as special damages is \$760.00.

There will be judgment, therefore, for the plaintiff for \$9,797.00 and costs.

Judgment for the plaintiff.

Solicitors: *Singh & Co.; N. Sharma.*

PUBLIC PROSECUTOR v. FOO JUA ENG

[A.Cr.J. (Raja Azlan Shah J.) December 18, 1965]

[Kuala Trengganu — Criminal Appeal No. 12 of 1965]

Criminal Law and Procedure — Trial — Meaning of proof beyond reasonable doubt — Assisting in carrying on a public lottery — Common Gaming Houses Ordinance, 1953.

The respondent was charged with the offence of assisting in carrying on a public lottery. The respondent was found by the police in a room about three feet from a dressing table on which the exhibits were found. The learned magistrate acquitted the respondent as he held that there was no physical possession of the exhibits disclosed.

Held: the duty of the prosecution is to prove its case beyond reasonable doubt but not beyond the shadow of a doubt and in this case the learned magistrate should in view of the physical proximity of the respondent to the exhibits have found that there was a case for her to answer.

Case referred to:—

(1) *Miller v. Ministry of Pensions* [1947] All E.R. 372.

CRIMINAL APPEAL.

Mohamed bin Ya'acob (Deputy Public Prosecutor) for appellant.

Anthony Wilson for the respondent.

Raja Azlan Shah J.: This is an appeal by the learned Deputy Public Prosecutor against the decision of the learned magistrate who, at the end of the prosecution case, acquitted and discharged the respondent without calling upon her defence. The respondent was charged with assisting in carrying on a public lottery, an offence punishable under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953. The facts of the case are as follows.

On information received, P.W.1, a gazetted Senior Police Officer, raided a top-floor room of house No. 19, Jalan Masjid, Kuala Trengganu, together with a police inspector. On approaching the said room of the said house, respondent was seen some three feet from the dressing table on which exhibit P1 was lying. On seeing P.W.1 and the inspector, both of whom were in mufti, respondent tried to close the door, but it was eventually forced open by P.W.1.

In his grounds of decision the learned magistrate came to the conclusion that there was no physical possession on the facts disclosed. He based his conclusion on the fact that exhibit P1 was recovered from the dressing table some three feet away from the respondent and there was lack of evidence as to how the said exhibit came to be on the table or when or by whom they were left there. The facts speak for themselves, and it is for the learned magistrate to draw the necessary inference of physical possession. With regard to the aspect as to how the exhibit came to be on the dressing table, to my mind the learned magistrate has misdirected himself. What the prosecution has to accomplish in this case is whether it has proved its case beyond reasonable doubt but not beyond the shadow of a doubt. As was stated by Denning J. (as he then was) in *Miller v. Ministry of Pensions*:⁽¹⁾

"Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice".

With regard to the mental element, the learned magistrate rightly directed his mind that knowledge or consciousness would depend on the surrounding circumstances. However, he failed to direct his mind adequately on the facts. He directed his mind to the circumstance when the respondent tried to close the door on P.W.1. But he failed to consider the other circumstance which, taken together, may well be that the element of possession was proved. That circumstance is the physical proximity of the respondent to the exhibit in question.

In view of the case as a whole, I am satisfied that the learned magistrate has misdirected himself as to fact and law. I would